

REMARKS

In the Office Action, claims 1 and 3-5 are rejected under 35 U.S.C. § 103 as allegedly unpatentable in view of Japanese Patent Publication No. 2002/075368 ("Yamaura"). In response, previously-pending claims 1-5 have been canceled without prejudice or disclaimer. Therefore, the rejection should be rendered moot, and thus withdrawn in view of same. Further, Applicants have added new claims 6-15, and respectfully submit that the new pending claims should be considered distinguished from the Yamaura reference as further detailed below.

With respect to newly-added claims 6-15, claims 6 and 12 are the sole independent claims. Claim 6 is directed to a positive active material, where claim 12 is directed to a non-aqueous electrolyte secondary battery. Common to both, a lithium nickelate formula is recited where M' is selected from the group consisting of Fe, Mn, Cu, Zn, Sn, Ga, Cr, V, Ti, Mg, Ca, Sr, and mixtures thereof. Claims 9 and 13 further specify that the lithium nickelate is Li Ni O_2 . Moreover, claims 10 and 14 recite that the olivine compound is Li, Mn PO_4 .

In contrast, the Yamaura reference is directed to the general formula $\text{LiNi}_{1-x}\text{M}_x\text{O}_2$, where M is at least one of Al, B, Co. This is clearly different from the nickelate compound as claimed and as further defined in new claims 9 and 13. Moreover, Yamaura is further directed to the general formula LiFePO_4 in contrast to the olivine compound as further defined in new claims 10 and 14. Therefore, Applicants believe that the Yamaura reference should be considered distinguished from the claimed invention for at least these reasons.

Accordingly, Applicants respectfully submit that the rejection should be withdrawn, and thus, believe that the present application is in condition for allowance in view of same.

Respectfully submitted,

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